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Attorneys for Plaintiff-Counterclaim Defendant
NETAPP, INC.,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.

Plaintiff-Counterclaim Defendant,

v.

SUN MICROSYSTEMS, INC.

Defendant-Counterclaim Plaintiff.

Case No. C-07-06053 EDL

**PLAINTIFF NETAPP, INC.'S
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL THE
UNREDACTED VERSIONS OF
PLAINTIFF NETAPP, INC.'S
OPPOSITION TO SUN
MICROSYSTEMS, INC.'S MOTION
FOR PARTIAL STAY AND
DECLARATION OF DAVID HITZ IN
SUPPORT THEREOF**

1 Pursuant to Civil Local Rules 7-11 and 79-5, NetApp, Inc. (“NetApp”)
2 respectfully requests that this Court issue an Order sealing the following documents lodged with
3 the Court: the unredacted versions of Plaintiff NetApp, Inc.’s Opposition to Sun Microsystems,
4 Inc.’s Motion for Partial Stay (“NetApp’s Opposition”) and Declaration of David Hitz in Support
5 of NetApp, Inc.’s Opposition to Defendant Sun Microsystems, Inc.’s Motion for Partial Stay
6 (“Hitz Decl.”).

7 The legal standard for filing these documents under seal is one of “good cause”.
8 In *Kamakana v. City and County of Honolulu*, 447 F. 3d 1172, 1180 the Ninth Circuit wrote, “A
9 ‘good cause’ showing under Rule 26(c) will suffice to keep sealed records attached to non-
10 dispositive motions.”

11 Good cause exists to file the documents listed above under seal because they
12 contain highly confidential information which would be damaging and prejudicial to NetApp
13 were these documents publicly disclosed. These documents are designated as “Highly
14 Confidential – Attorneys’ Eyes Only” under the Protective Order entered in this case. *See*
15 Declaration of Aaron M. Nathan in Support of Plaintiff NetApp, Inc.’s Administrative Motion to
16 File Under Seal the Unredacted Versions of Plaintiff NetApp, Inc.’s Opposition to Defendant Sun
17 Microsystems, Inc.’s Motion for Partial Stay and Declaration of David Hitz in Support Thereof
18 (Nathan Decl.) at ¶¶ 2-3. Specifically, the information contained in the Hitz Decl. and cited in
19 NetApp’s Opposition is confidential and of a sensitive commercial and competitive nature,
20 relating to business strategy and market analysis. There is a risk that NetApp would be adversely
21 affected if such information were not protected from disclosure and misuse. As Mr. Hitz states,
22 “The information contained in [the Hitz. Decl.] pertains to NetApp’s confidential business
23 strategies and analysis of the storage systems market.” Nathan Decl. at ¶ 5 citing Hitz Decl. at
24 ¶ 21. The fact of such information being made public could itself cause the very harm Mr. Hitz
25 foretells in his Declaration, thus rendering the Declaration “a self-fulfilling prophecy.” *Id.* Such
26 harm would be compounded by the natural harm flowing from NetApp’s competitors having
27 access to NetApp’s confidential strategy and market analysis. Without the ability to file the
28 unredacted versions of these documents under seal, NetApp would therefore be placed in a double

1 bind, in which it would be impossible to protect its rights without suffering irreparable harm.
2 Accordingly, NetApp's redactions and attached Proposed Order are narrowly tailored to protect
3 only that information for which there is good cause to file under seal.

4 For the foregoing reasons, NetApp respectfully requests that this Court grant its
5 Administrative Motion to File Under Seal the Unredacted Versions of Plaintiff NetApp, Inc.'s
6 Opposition to Sun Microsystems, Inc.'s Motion for Partial Stay and Declaration of David Hitz in
7 Support Thereof.

8 Dated: April 29, 2008

/s/ Edward R. Reines

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